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APPLICATION NO.	FILING DATE	FIRST NAME / INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09 768,080	01 23 2001	David A. Estell	GC527C3	2502

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GENENCOR INTERNATIONAL, INC.
925 PAGE MILL ROAD
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EXAMINER

SAUNDERS, DAVID A

ART UNIT	PAPER NUMBER
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1644

DATE MAILED: 09 27 2002

10

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

768080

Applicant(s)

ESTELL et al

Examiner

SAUNDERS

Group Art Unit

1644

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☐ Responsive to communication(s) filed on _____.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 7-10, 14-27 is/are pending in the application.
- ☐ Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☐ Claim(s) _____ is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☒ Claim(s) 7-10, 14-27 are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____.
 - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

Art Unit: 1644

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- Selected
in instant
page 3*
- I. Claims 7-10 and 14-15, drawn to altered polypeptides that produce a different immunogenic response that is a lowered immunogenic response, classified in class 435, subclass 183+ and class 530, subclass 350+.
- II. Claims 7-8 and 14-15, drawn to altered drawn to altered polypeptides that produce a different immunogenic response that is an increased immunogenic response, classified in class 435, subclass 183+ and class 530, subclass 350+.
- III. Claims 16-27, drawn to methods of testing for allergenicity using transgenic mice, classified in class 435, subclass 7.4+ and class 800, subclass 3.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and III are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the allergenicity of a polypeptide can be evaluated by other methods – e.g. by the in vitro proliferation of T-cells in response to the polypeptide.

Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions have different effects – i.e. producing lowered vs. increased immunogenic responses. The motivation to alter polypeptides to produce lowered responses (e.g. lowered allergenic or

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autoimmune responses) would be different from the motivation to alter polypeptides to produce increased responses (e.g. vaccinations).

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification and recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David A Saunders, PhD whose telephone number is 703-308-3976. The examiner can normally be reached on Mon.-Thu., 8:00 am-5:30 pm and on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached on 703-308-3973. The fax phone numbers for the responses to restrictions is 703-305-3704. Use attached form.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

David A. Saunders
DAVID SAUNDERS
PRIMARY EXAMINER
ART UNIT 182/1644



RESTRICTION ELECTION FACSIMILE TRANSMISSION

DATE:

FROM/ATTORNEY:

FIRM:

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ART UNIT:

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**PLEASE NOTE: THIS FACSIMILE NUMBER IS TO BE USED ONLY
FOR RESPONSES TO RESTRICTIONS.**

COMMENTS: _____

IF YOU HAVE NOT RECEIVED ALL THE PAGES OF THIS TRANSMISSION, PLEASE CONTACT THE ATTORNEY AT THE TELEPHONE NUMBER LISTED ABOVE.

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